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EXAMINER	
SHIBRU, HELEN	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ADOLF PROIDL and ANDRAS KALMAR

Appeal 2009-004521
Application 10/015,836
Technology Center 2400

Before THOMAS S. HAHN, CARL W. WHITEHEAD, JR., and BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF CASE

Summary

Claims 1-13 stand rejected under 35 U.S.C. § 103(a) over Hennig (US 5,956,455; issued Sep. 21, 1999) in view of Jackson (US 5,963,264; issued Oct. 5, 1999). Appellants appeal under 35 U.S.C. § 134(a) from this rejection. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Background

Appellants' invention relates to an error-tolerant recording arrangement (claims 1-11) and a recording method (claims 12 and 13) for recording television broadcasts. The television program, or "information broadcast," is delivered by an information signal. The information signal also includes broadcast identification and a broadcast start time.

Appellants' recording arrangement includes a recording control means for evaluating the broadcast identification that is contained in the information signal. The recording control means also evaluates a recording start time. The recording start time is reached a lead time interval before the broadcast start time that is contained in the information signal.

The recording arrangement starts recording the television broadcast either when the broadcast identification is detected or when the recording start time is reached (Abstract). By activating the recording upon the first occurrence of either of these conditions, television broadcasts are supposed to be recorded more reliably. This is because a program will be recorded even if it starts early and even if an incorrect broadcast identification has been provided in the information signal (Spec. 3).

Appellants assert, *inter alia,* that the obviousness rejection is improper because "the combination of Hennig and Jackson fails to show material elements recited in the independent claim[s]" (App. Br. 6). More specifically, Appellants note that independent claims 1 and 12 both require detection of a recording start time that is reached a lead time interval before the broadcast start time (App. Br. 7, 11). They contend that the combined prior art fails to disclose this limitation.

In the Response to Arguments section of the Examiner's Answer, the Examiner attempts to clarify the rationale underlying this aspect of the rejection by explaining how the claim language is being interpreted:

> [T]he present application specification or claim do not specifically disclose or recite 'the use of a recording start time defined as a lead time interval before the broadcast start time of the programmed information broadcast (emphasis added).' the present application discloses "recording start time is reached a lead time interval before the broadcast start time of the programmed information broadcast." The two statements are different.

(Ans. 7-8).

ANALYSIS

We understand the Examiner's general position to be that while the combined prior art does not disclose a recording start time that is defined to be a lead time interval before the broadcast start time, the claims may be interpreted more broadly so as to not require such a feature. We do not, however, understand the specific point the Examiner is attempting to make by noting that the claims recite the recording start time is "reached" as opposed to "defined." This fact seems to be a distinction without a difference.

In order for us to sustain the Examiner's rejection, then, we would need to resort to impermissible speculation or unfounded assumptions or rationales to supply deficiencies in the factual bases of the rejection before us. *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). Accordingly, we will not sustain the Examiner's rejection of independent claims 1 and 12 or of claims 2-11 and 13, which respectively depend from these claims.

DECISION

We reverse the Examiner's decision rejecting claims 1-13 as obvious under 35 U.S.C. § 103(a).

REVERSED

ELD

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